

THE MARTHA'S VINEYARD COMMISSION

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Martha's Vineyard Commission Minutes for the Special Meeting of March 14, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, March 14, 2002, at 7:30 p.m. in the Baylies Room at the Old Whaling Church, Main Street, Edgartown, Massachusetts. At 7:46 p.m., James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – called the Special Meeting to order.

[Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel; M. Ottens-Sargent; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. All of these members remained until the end of the Special Meeting.]

The Chairman informed the members that there would be some Commission business to take up after the Public Hearings. Then he handed the gavel over to James Athearn, a Commission member at large from Edgartown and the Hearing Officer for that evening.

Public Hearing: Conformance with the Commission's Guidelines of the Proposed Regulations for the Island of Chappaquiddick DCPC.

Mr. Athearn read into the record the Notice of Public Hearing on the Conformance of the proposed Regulations for the Island of Chappaquiddick District of Critical Planning Concern with the Martha's Vineyard Commission's Guidelines. *[See the Full Commission Meeting File of March 14, 2002 (the meeting file) for a copy of said notice.]* Mr. Athearn explained that the purpose of the Hearing was to find whether or not Edgartown's proposed Regulations for the Chappaquiddick DCPC were consistent with the MVC's Guidelines. Thus, he said, all who spoke that evening should try to focus as much as possible on the issue of Conformance.

Presentation by the Town.

Michael Donaroma – the Edgartown Selectmen's Appointee and a member of that Town's Planning Board – provided a report on what had been going on in the Chappaquiddick DCPC Regulations Committee meetings that had been a joint effort of the Board of Selectmen, the Board of Health, the Planning Board and the Conservation Commission. The committee, he said, had met weekly or bi-weekly and had been composed of both year-round and summer residents. Mr. Donaroma turned to the Annual Town Meeting Warrant Articles which contained the proposed Regulations. Article 11, he went on, proposed to establish a standing Chappaquiddick Affordable Housing Advisory Committee, which would report to and advise the Board of Selectmen.

Christina Brown – a Commission member at large from Edgartown and the Assistant to the Edgartown Planning Board – explained, "Their most important function is ... to kind of coordinate the interests of private citizens on Chappaquiddick with getting more affordable housing, to coordinate that with all the other affordable housing groups on the Vineyard – the Regional Housing Authority, the Town's Resident Homesite Committee. They're not a stand-alone, do-projects committee. They're a spread-the-word, educational, get-interest-going-on-Chappaquiddick [committee]."

Ms. Brown added that the new committee would be modeled after the Edgartown Ponds Advisory Committee, "which has very much the same role and has been really active and successful, coming up with ideas, getting neighbors and residents moving and involved."

Mr. Donaroma addressed the four Articles submitted by the Planning Board for the Town Meeting Warrant. He went quickly over Article 12A, which is a technical description of the boundaries of the District. He then provided some details regarding Article 12B, which if passed would establish a Chappaquiddick building permit cap, limiting the number of permits to six per year.

"That was the first thing we all pretty much came to a consensus on," Mr. Donaroma remarked. "There was a group of people working on that, that in looking through the averages over the years, it seemed to be a number that most people felt comfortable with." He described the cap as a sort of valve that would even out the growth rate when the economy started to boom.

Ms. Brown pointed out that the Chappaquiddick building permit cap would allow exemptions for affordable housing. Mr. Donaroma noted that exemptions would also be given for projects "already in the pipeline" or for projects in which the lot was surrounded by land being put into conservation. "So there's a couple of carrots in there, too," he said.

Article 12C concerned the building coverage footprint, Mr. Donaroma continued, which would be limited to the greater of 10 percent of the lot or 2,000 square feet, up to a

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maximum of 3,500 square feet; larger structures could be allowed by Special Permit. "There was a lot of debate on this one," he observed.

Ms. Brown related how many of the people who had attended the committee workshops had put a lot of work into looking at the sizes of houses and the patterns of house sizes on Chappaquiddick, with much thought given to the effect of very large houses on the local economy and rural character. She explained that the 2,000-to-3,500-square-foot size limits reflected the average size of houses already on Chappaquiddick.

Kate Warner, the West Tisbury Selectmen's Appointee, wondered if it was the DCPC that would allow the Town to restrict house sizes. "Yes," answered Mr. Donaroma. Ms. Warner confirmed with Mr. Donaroma and Ms. Brown that the 2,000-to-3,500-square-foot range referred only to the footprint of the structure.

Regarding Article 12B, Chairman Vercruysse wanted to know if there was a definition for "in the pipeline." Ms. Brown explained that its meaning was made clear in the full text of the Article.

Mr. Donaroma then asked **Edith Potter of the Edgartown Conservation Commission** to present the relevant Articles on the Town Meeting Warrant submitted by the ConCom. Ms. Potter began by thanking Ms. Brown for her efforts in overseeing the Regulations Committee process. "I would happily second that," said Mr. Donaroma. (Applause) Ms. Brown in turn recognized the hard work of the Planning Board and Conservation Commission members.

Ms. Potter described the work of the Coastal Issues Workgroup and the conclusion of the group that the Town should extend the jurisdiction of the Wetland Protection Bylaw from 200 feet to 300 feet inland from the coastal wetlands (Article 14). In addition, the workgroup had recommended the provisions of Warrant Article 15, which were: lawns limited to 2,500 square feet; prohibition of all 'cides; prohibition of in-ground irrigation systems; limitations on exterior lighting; and a 25-foot vegetative buffer between the development and the wetland.

Mr. Donaroma noted that the Warrant Articles would be explained in greater detail at the Annual Town Meeting. "But tonight," he concluded, "I think it's clear, in my opinion, that these are ... all pretty much derived from what we were supposed to be doing in the DCPC."

The Hearing Officer then read into the record the Goals and Guidelines for the Chappaquiddick DCPC. *[See pages 5 and 6 of the Staff Notes entitled "Chappaquiddick Island DCPC, Public Hearing March 14, 2002, 7:30 p.m. - Staff Notes (Taylor)," contained in the meeting file.]*

Staff Report.

William G. Veno, Acting Principal Planner, stated that Staff considered the proposed Regulations to be in Conformance with the Commission's Guidelines. The only Guideline that had not been addressed, he said, was the update of the 1979 Open Space Plan. "But otherwise they're consistent," he concluded.

Questions and Comments from Commission Members.

Mr. Donaroma explained that if the Town were to approve these Regulations, the Moratorium would be lifted. However, because a few issues that needed to be addressed had not made it onto the 2002 Annual Town Meeting Warrant, the work of the four-board committee would continue and Amendments would be proposed in the future. "So we haven't addressed everything yet," he said.

Megan Ottens-Sargent, the Aquinnah Selectmen's Appointee, wondered if there would be another Moratorium, since the committee's work was not yet finished. It would work as it had with the other DCPCs, answered Mr. Donaroma, that is, proposed Amendments would come before the Commission and be heard before a vote on adoption by the Town. Responding to another question from Ms. Ottens-Sargent, Mr. Donaroma said that the unfinished Amendments were not in any shape to be discussed that evening.

Regarding Article 15, Chairman Vercruysse wanted to know what the rationale was behind the prohibition of in-ground irrigation systems. Ms. Potter replied that the Conservation Commission felt that such systems pulled out "an awful lot of water," something that could exacerbate the potential for saltwater intrusion. Moreover, she said, these systems encouraged owners to plant species like bluegrass that were difficult to maintain without plenty of water and 'cides.

There being no further questions, the Hearing Officers gave the Commission members a few minutes to read over the *Staff Notes*.

Testimony from Town Boards.

Alan Wilson, Chairman of the Edgartown Planning Board, commented that Mr. Donaroma had done "a fine job" on the presentation. Something that had come out of the DCPC discussions on affordable housing, he noted, was the anti-demolition Article on the Town Warrant that, if passed, would apply Town-wide.

Steve Ewing, also of the Edgartown Conservation Commission, began by thanking Ms. Brown, Mr. Donaroma and the residents of Chappaquiddick, who had all worked hard on the Regulations. "The Regulations may not be perfect, but they're pretty good," he remarked. "But I think the most important thing is that Chappaquiddick people have gotten together and finally started to discuss its future, and I think what definitely should

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come out of this is [that] Chappaquiddick as an entity is under the DCPC umbrella, so it can have a better tool."

Testimony from Members of the Public.

Ronald Monterosso, a year-round resident of Chappaquiddick, addressed the issue of Conformance and questioned whether the Regulations did, in fact, "ensure future affordable housing on Chappaquiddick," as stated in the Guidelines. "The Regulations proposed by the Town ensure more talk about affordable housing," he declared, "but do they ensure affordable housing? No."

Mr. Monterosso observed that the way to ensure affordable housing was to empower either those looking for it or Town Boards with a means of obtaining it. "There must be some mechanism," he stressed. "And there's nothing here that ensures anything, except more talk and more talk about affordable housing."

"I strongly urge this Commission," concluded Mr. Monterosso, "to send back to the Planning Board for reconsideration the affordable housing issues."

Mary Spencer of Chappaquiddick, who had participated in the affordable housing workgroup, made the point that contrary to Mr. Monterosso's opinion, a fairly consistent group of people had worked very hard over a number of months on the affordable housing proposal. "We had numerous conversations about what the meaning of that phrase in your Guidelines was," she said, and they had concluded that their mandate was not to create another affordable housing group but rather to create a means by which they could funnel information to existing groups. Primary among those groups was the Edgartown Resident Homesite Committee, which had voted to recommend the Warrant Article.

Mr. Monterosso stood up again to offer another comment. "The statute and the Decision of this Commission said that Regulations needed to be proposed, Regulations that ensure. We have no Regulations and no ensurance [*sic*]," he said. Mr. Donaroma interjected, "We agree completely. We just haven't gotten them yet. I agree, we do need to keep working on it, and I think we should try to come up with Regulations that will ensure. That's what we said [we would] do. That's what we should work on. Easier said than done."

Tristan Israel, the Tisbury Selectmen's Appointee, asked where the word "ensure" appeared in the Decision. Staff Secretary Pia Webster referred him to Item 1a on page 6 of the aforementioned Staff Notes.

Mr. Monterosso spoke once more: "If everyone's in agreement that this is not the end, then let's hold Edgartown's feet to the fire. Let's send it back one more time and it comes back here and you make the affordable housing rules."

Robert Enos of Chappaquiddick pointed out that another Article on the Annual Town Meeting Warrant proposed to give Edgartown a chance to reinstate the building permit cap established in the fall of 1999 that had expired after two years. If that cap were approved, how would that affect the Chappaquiddick building permit cap? he asked.

Ms. Brown explained that, by petition of registered voters, there was an Article on the Warrant to reinstate the cap, with a maximum of 85 permits per year given out monthly by lottery. Having spoken with the Building Inspector, it was her understanding that if that Article passed, the two caps could easily be coordinated by means of some minor changes that would be proposed on the floor of Town Meeting. For instance, 85 was not divisible by 12, so the Building Inspector wished the annual limit to be 84. Also, the dates of both the Chappaquiddick and Town-wide lottery drawings had to be on the same day of the month.

Mr. Enos expressed concern about the exemptions that were allowable under the Chappaquiddick proposal. "The exemptions in the Chappaquiddick one are priorities in the Town-wide one," explained Ms. Brown. "If the Town-wide one passes, the overriding one ... is the 85 a year, six on Chappaquiddick, but more on Chappaquiddick up through the exemptions, but of the 85."

Ms. Ottens-Sargent thought that perhaps Mr. Enos was asking if it was a matter of the more restrictive or the less restrictive by-law applying. Mr. Enos said that he wanted to know if the Town-wide building permit cap would overrule the Chappaquiddick one. Ms. Brown answered that 85 permits overall would be allowed each year, and six-plus of those would be from Chappaquiddick.

Mr. Athearn closed the Public Hearing at 8:17 p.m.

**Public Hearing: Conformance with the Commission's Guidelines of the Proposed
Amendments to the Edgartown Ponds Area DCPC Regulations.**

The Hearing Officer read into the record the Notice of Public Hearing for the Conformance of the proposed Amendments to the Edgartown Ponds Area DCPC Regulations with the Commission's Guidelines. *[See the meeting file for a copy.]*

Presentation by the Town.

Steven Ewing of the Edgartown Ponds Advisory Committee outlined the first Amendment to the Regulations, Article 20, which sought to phase out operation of two-stroke engines on the ponds. Article 21, he continued, sought to prohibit the use of "synthetic products, such as fertilizers, herbicides, fungicides, insecticides, nematocides, rodenticides and/or other quick-release chemicals" from the Town's Zone 3 (the Commission's Inland Zone). Current Conservation Commission rules forbade the use of these 'cides within 300 feet of the water, he said, and now they were proposing that the 'cides be prohibited from the first 700 feet.

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Articles 22 and 23, Mr. Ewing went on, were "a little more controversial." The former sought to limit the heights of structures in Zones 1 and 2 (the Shore Zone and the Intermediate Zone, respectively, in the Commission's Guidelines). The proposed limitations were 21 feet for a pitched roof and 13 feet for a flat roof, with a Special Permit procedure to raise the limits to those of the underlying zoning regulation, under certain circumstances defined in the Article. Article 23 sought to limit to 5,000 square feet the footprints of houses in Zones 1 and 2.

Mr. Ewing explained that Article 22 and 23 should have been submitted 12 years before when the Edgartown Ponds Area DCPC had first been designated. *[See page 12, Guideline 1(f) of Decision of the Martha's Vineyard Commission: Edgartown Ponds Area District. That Guideline states: "Height of all structures from mean natural grade level shall be at least one (1) foot less than average surrounding canopy height in wooded areas. In open terrain, height of building shall be eighteen (18) feet for a pitched roof and thirteen (13) feet for a flat or shed roof. (Plan Review Committee may approve Special Permit to modify the height restriction up to the maximum allowed in the underlying Zoning District if it finds such modification is consistent with the character of the immediate landscape and the Guidelines as recited herein.)"]*

Mr. Ewing continued that since the Designation of the District, his committee had observed how the Regulations had played out, and thus they had prohibited boatsheds and piers along the ponds when they were seen to disturb the natural, historic character of the shoreline vista. "And now as we stand back and see how the Regulations have played out over the years," he said, "we're finding that the landscape – the natural, historic view and vista along the public body of water, the Great Pond – is really starting to be dominated by the big houses. And so the intent of these next two Articles is to get people, if they want to build a big house – a really big house – get it back, get it back 300 feet out of the Zone 2, where we're allowing houses to be built right now."

If the house were to be built 300 feet inland, Mr. Ewing went on, the structure could have a height of up to 26 feet. "They can build a big house," he said. Mr. Ewing then described the recent case of a proposed 15,000-square-foot structure (the Levine house), which had been reduced to around 10,000 square feet after the owner had worked with the Conservation Commission. He then provided details on the other elements of the proposed Articles.

"We're not saying that someone can't build," said Mr. Ewing. "We don't want to pigeonhole someone who's, you know, the law can have unintended consequences, where they build a huge, long, sprawling ranch because we won't let them go two stories ... Someone can still do that. But if they want to do this close to the pond, as we approach build-out and especially to address tear-downs, we want to have some input into that process."

Staff Report.

Water Resources Planner William M. Wilcox referred the members to a Staff Report by DCPC Coordinator Jo-Ann Taylor entitled *Edgartown Ponds Area District, Public Hearing March 14, 2002, 7:45 p.m. – Staff Notes (Taylor)*. [See the meeting file for a copy.] Mr. Wilcox pointed out that said report indicated that the Commission had to close the Hearing and vote on the Conformance question by April 9, the date of the Annual Town Meeting.

Mr. Wilcox noted that Mr. Ewing had done “an excellent job” of presenting the Articles. He then referred the members to pages 1 and 2 of the aforementioned Staff Report, where Ms. Taylor had indicated that the proposed Amendments to the Regulations (as presented in Articles 20 through 23) were consistent with the Commission’s Guidelines. He pointed out that the Articles regarding building height and footprint were designed to protect the scenic vistas around the ponds.

Mr. Wilcox reported that the Commission had received one piece of correspondence, this from Brian M. Hurley of the Boston law firm Rackeman, Sawyer & Brewster, representing the Pohogonot Trust. [See the meeting file for a copy of the letter.] The letter indicated that for many years said trust had owned and managed a significant parcel of land off Pohogonot Road, with frontage on both Jobs Neck Pond and Oyster Pond.

One issue raised by Mr. Hurley that Mr. Wilcox considered “interesting” was the fact that the Planning Board’s Hearing of the Amendments would not occur until March 19. “Thus, the Commission will not have the benefit of the Planning Board report required under G.L. c.40A, §5 at the time of the Commission [P]ublic [H]earing,” wrote Mr. Hurley. Because of this factor, Mr. Wilcox suggested that it might make sense to extend that evening’s Public Hearing until a date after the Planning Board’s Hearing.

Ms. Brown, the Assistant to the Edgartown Planning Board, explained that under the law cited, the Planning Board was required to make a report to Town Meeting. “[Chapter] 831 does not require that the Planning Board make a report to the Commission,” she said. “The language doesn’t make that quite clear as to who the report goes. The Planning Board *will* have its Public Hearing on the 19th and we’ll report to the Town Meeting on April 9th, as required by the law.”

Mr. Hurley has also raised the issue of uniformity, reported Mr. Wilcox, citing the example of Herring Creek Farm, where the question of view vistas could perhaps be applied more forcefully and where the Commission had exempted the proposed structures from the requirements found in Articles 22 and 23.

Mr. Hurley had objected as well to what he referred to as the “absence of standards,” citing the language of a condition for a Special Permit, namely, “that any proposed dwelling in excess of 21 feet ‘not have a substantial impact on the natural and historic views and vistas as viewed from a public place.’ This criteri[on], which necessarily

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implicates personal aesthetic considerations, does not fairly apprise a landowner of an objective standard applied to the land."

Mr. Wilcox described how Mr. Hurley had characterized the Planning Board's delegation of permit-granting authority to the Edgartown Ponds Advisory Committee as an "improper delegation of authority." Lastly, Mr. Hurley had pointed out that M.G.L. Chapter 40A, Section 3 prohibited any zoning ordinance which regulated or restricted the interior area of a single residential building. Thus, the Town was not authorized to restrict the footprint of structures to be built within the zone.

Mr. Israel clarified with Mr. Wilcox the point made by Mr. Ewing that restricting the height of houses could result in sprawling ranch-style structures. *[See the last paragraph under "Presentation by the Town" on page 7.]* Mr. Wilcox remarked that this argument sounded logical, although Article 22 would allow the homeowner to build a second story if he set the structure back 300 feet from the shoreline.

Andrew Woodruff, a Commission member at large from West Tisbury, asked for more details on Mr. Hurley's argument about the Herring Creek Farm Trust's structures being exempt from the provisions of Articles 22 and 23. Mr. Donaroma explained, "The Herring Creek Farm already went through the Martha's Vineyard Commission and went through the Town, all the Town Boards, all the Board of Health [requirements], all the building envelopes – everything has been scrutinized right down to the size of the parcels. And deals have been made, land has been given to conservation, and then now to turn around and say, 'You can't build on it' – let me finish *[Mr. Woodruff had interrupted]* – That's right. That one area is exempted because all those permits were certainly before this."

Mr. Woodruff wanted to know how other property owners would be affected. Mr. Ewing explained that just as the Commission considered exemptions during a DCPC Moratorium for owners whose permit applications were already in the pipeline, so too would the Town Boards consider the point at which the applicant was in the permitting process. He discussed briefly the examples of the Swan Neck development and the Levine house.

"So, Bill [Wilcox], our charge tonight is consistency," noted Chairman Vercruysse. He asked Mr. Wilcox if he felt that the Amendments met the Goals and Guidelines of the Edgartown Ponds Area District Decision. "Yes," answered Mr. Wilcox.

Ms. Ottens-Sargent requested that Mr. Wilcox provide a brief summary of the Goals and Guidelines of the Decision. Mr. Wilcox went through Section 3 of the Decision, which concerned why the area had been designated. At that point Ms. Ottens-Sargent realized that the Goals and Guidelines had, in fact, been mailed already to the Commission members on March 8. *[See the meeting file for a copy.]* Mr. Wilcox mentioned the protection of wildlife, the maintenance of scenic vistas and the protection of shellfish beds as reasons for the Designation.

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Mr. Athearn asked for more testimony from Town Boards; none was offered. John Best, a Commission member at large from Tisbury, asked Mr. Ewing the following: If the two-stroke-engine technology improved, would his committee come back to amend Article 20? "Is that something you're prepared to do?" he asked. "Sure, oh yeah," replied Mr. Ewing, "we'll do whatever is necessary ..."

Testimony from Members of the Public.

Eric Peters of Edgartown stated that he was speaking on behalf of the Pohogonot Trust and that Mr. Hurley could not be there that evening. Mr. Peter explained that his family had had a substantial piece of property in the District in question for nearly 100 years. He had personally been involved in the committee that had drafted the original Regulations in the year after the District Designation, he said. His family's view was that although the protection of vistas and limits on height and footprint had been part of the original Guidelines, those issues had been dealt with adequately in the Town's Wetlands Protection By-Law.

The original Guidelines, continued Mr. Peters, had provided for height limitations in the Coastal District (a.k.a. the Inland Zone). *[See pages 11 and 12 of the Decision.]* However, since no Regulations had been formulated and approved to limit height in the zone, the height allowed in that area was 26 feet, as it was in other parts of the Town. Mr. Peters objected that the standards for allowing exemptions from the restrictions by Special Permit were too subjective and could be unreasonably applied both by the permitting authority and by neighbors who chose to bring suit.

Mr. Peters remarked that his family was content with the present Guidelines. Moreover, he said, most of this area was already built-out. He then showed to the Commission members an assessor's map where he had marked in orange the places where houses had already been built. Said map also showed, marked in green, the various conservation areas in the zone. "And so it is our feeling that for those of us, such as our family, who may want to build something in the future or in my case my own family had another piece of property that is in here ..., we feel that the effect of this is going to be discriminatory ..."

Mr. Peter also made reference to a historic house on Oyster Pond which could not be rebuilt under the new Regulations. He then passed around a photograph of a house that was 26 feet in height which had no shielding vegetative canopy around it. Under the new Regulations, although you could not build a 26-foot-high house, you could still build a 4,999-square-foot ranch-style house, Mr. Peters observed. "And I'm not sure what that has to do with the historic character of Edgartown or what is consistent with the other buildings that have been built in this District," he said.

Mr. Peters reiterated that that he and his family considered the proposed Regulation unfair and inconsistent with the original DCPC Decision. He mentioned that the original

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Regulations had expanded the jurisdiction of the Conservation Commission and had already addressed the concerns that the District was meant to take up.

Mr. Peter acknowledged that although, as Ms. Brown had said earlier, the Planning Board normally reported on its Public Hearing to Town Meeting, he thought that it was "a little bit unusual here" that there had been no Public Hearing yet by Planning Board on the height and size limitations.

Robert Zeltzer, a Commission member at large from Chilmark, inquired, "How many candidates for tear-down and rebuild are there among the lots that you showed that are already built up?" Mr. Peters responded that he did not know, although he supposed that many of those houses were candidates for tear-down. "But that's really up to the individual landowner," he said, "and in some cases some of these houses might actually not be torn down because ... all the houses that are there now that are two stories, 26 feet. If these Regulations are done, they're all going to become pre-existing, nonconforming structures, which adds a whole other level of complication."

Mr. Israel asked Mr. Peters what exactly about the Regulations was not consistent with the Guidelines. Mr. Peters answered that after the yearlong process following the Designation, a consensus was reached that the original Regulations met the original purpose of the Guidelines. "And we think that they still meet that purpose," he said, noting that if a 26-foot height was not allowable by right, to say now that this was allowable only by Special Permit was not consistent. In addition, the limitation on footprint size was not there before, he added.

Mr. Woodruff wondered if Mr. Peters was objecting to all four of the proposed Amendments. Mr. Peter replied that he was against the height and size limitations. Referring to the Herring Creek Farm question, he observed that although it was an approved subdivision, those homeowners would be able to build 7,500-square-foot houses with 26-foot-high roofs.

Mr. Woodruff also wanted to know about the process that a homeowner would have to go through if he wanted to expand a pre-existing, nonconforming structure. Mr. Peters answered that generally such a person would have to go before the Board of Appeals for a Special Permit. Ms. Brown commented, "Because it's a DCPC, it's a question which has more involved things to look into ... Depending on how the DCPC was written, whether you go to the Board of Appeals or whether you even *can* go to the Board of Appeals." Mr. Peters then compared the present proposal to suddenly reducing the 32-foot height restriction in downtown Edgartown.

Mr. Woodruff inquired whether the total square footage of a pre-existing house being expanded could exceed 5,000 square feet. Mr. Peters responded that he had not worked everything out yet. Mr. Woodruff observed that although most of the lots in the District were built-out, many lots could benefit from the new Regulations in terms of limits on future expansions.

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Ms. Warner asked whether the proposed height of 21 feet for a pitched roof (Article 22) was based upon the height of the existing canopy. Mr. Ewing replied that it was partially that and partially because it was hard to build a two-story house if its height was limited to 21 feet. He then read aloud Amended By-Law Article 14.6 Edgartown Ponds Area District that would be before the Planning Board on March 19. *[See pages 1 to 2 of Notice of Public Hearing – Proposed Zoning By-Law Changes, a copy of which can be found in the meeting file.]*

Ms. Ottens-Sargent pointed out that if Article 22 passed, the opportunity to go above the height limit was still available by Special Permit. She also reminded the members that the Goals and Guidelines of the District were based on the Commission's enabling legislation, Chapter 831, the purpose of which was to protect qualitative aspects of the community. It was not simply about zoning, she said.

Ms. Ottens-Sargent elaborated: "The intent of these Regulations is to help promote the cultural continuity of the community being impacted by trophy houses.... So I think what is so wonderful about the Special Permitting process, and I've seen it so clearly listening to the Board members here from the Chappaquiddick Designation and this one, is that it gives people in the community, new people and people who have been here for a hundred years, the opportunity to work with the Board and people who have some expertise to, I guess, compromise, but to kind of get on the same page."

Mr. Peter disagreed, pointing out that the standards of the Special Permit process were usually very precise and that everyone going into it "knows what the program is." He also pointed to differing opinions on what constituted an historic quality and what did not.

Chairman Vercruysse remarked, "We're not here to discuss the merits of this. We're here to vote the consistency with the Guidelines. I mean, this [discussion of the merits] is for the Town [Meeting] floor. This is what the Townspeople have to grapple with. That's why I think it's important for us to keep focused on our issue and not going on all night about whether it's good or not."

The Hearing Officer called for more comments from members of the public; no one rose to speak. He then asked if anyone else would like to speak. Mr. Donaroma posed this question: "Did the Commission – maybe Staff can help me with this, Christina [Brown], you were there – did the Commission at that time [of the Designation] intend to make all the existing houses nonconforming? Were we trying at that time to trigger a review for every single house that exists? Because that's what we're going to be doing." He added, "I don't see it in the original wording."

Addressing Mr. Donaroma's concern, which he said he understood, Mr. Ewing pointed out that there were three major issues that had prompted the Nomination of the District: the water quality of the surface water of the ponds; the quality of the drinking water; and

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the natural historic views and vistas. He recalled how naturalist Gus Ben David had stood before the Townspeople 12 years before and argued for a 500-foot buffer around the ponds.

Mr. Ewing continued that at the end of a year's worth of work on the Regulations, he found that they had been watered down. "And this is kind of what we wanted initially," he emphasized, "and I'm really sad we never put that in. But this is the way it ended up. Now the legal technicalities of whether or not an addition to a nonconforming house has to get a Special Permit, that's still up for debate..."

Mr. Ewing went on: "But the point I'm trying to make is, the houses out there now are dominating the natural landscape. They dominating and fragmenting the wildlife habitat. These are what the Guidelines originally intended 12 years ago. I don't believe that what we're doing - it's after the fact, I'll admit, I'll admit it's after the fact - there are still 10 to 12 houses that can be built, and every single one of these can be torn down and rebuilt to you-name-the-square-footage. So what we're trying to do is step in now to try to create a safety net that doesn't allow the 30,000-square-foot house to be built that sets policy or precedent..."

Mr. Ewing also stressed that the Conservation Commission did have standards and that it looked at every individual application and site. "And I don't see why we won't continue this policy with these new Regulations," he said. "We'd only alert the architect and the applicant *before* they spend too much money on some too big of a house."

Roger Becker of Chappaquiddick addressed a point made earlier by Mr. Peters - that one should not develop new Regulations because it might change things. "The whole story about Regulations and coming up with new Regulations," he said, "is to change the story, ... to see what's going on and saying, 'Oh, my goodness. Look what they're doing now!' and to come up with something new." He cautioned the Commission members not to be afraid to change things now that new developments had come to pass.

James Joyce of Edgartown declared, "I would just make the comment that what we're doing here is taking away property rights. These new Regulations aren't based on science. They're based on somebody's opinion of what should be on somebody else's property. That's what's eroding here ... and I think there's plenty enough Regulations right now to control what's going on."

Mr. Joyce also expressed the view that the Commission should hear the Town's opinion on the new Regulations before they made any decision on this subject. "So no decision should be made until after next Tuesday," he concluded.

Addressing the issue of subjectivity, **Mr. Peters** recounted how he had spent 30 years growing up and seeing nothing across Oyster Pond. There was nothing on that land because his uncle owned it. Then his uncle sold it and the parcel was subdivided. "And when I look at those houses, coming from nothing as a child to today, I would be

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perfectly honest and tell you that some of them, I like the way they look. Some I don't. That's life. And some of them are bigger than what I would build. They have more money than I have. But I do not think that they dominate the landscape."

More Questions and Comments from the Commission Members.

Mr. Israel wondered whether the Public Hearing should be continued until the following week, since more than one person had recommended that they wait to hear what the Townspeople had to say at the Planning Board Hearing on March 19.

Mr. Zeltzer pointed out that all the Commission was deciding that evening was whether the proposed Regulations fell within the scope of the Guidelines. "The Town Meeting is the body that is going to decide whether they want to adopt them or not," he observed. "What the Planning Board says to us is not going to show us more or less whether these fall within the Guidelines or not."

Mr. Israel again expressed concern that a number of people had had a problem with the Commission's voting on Conformance before they had a report from the Planning Board. Mr. Woodruff noted that they had, in fact, heard from Planning Board member Michael Donaroma and that the Townspeople had had ample opportunity to speak.

The Hearing Officer proposed that he close the Public Hearing but leave the Written Record open for one week so that the Planning Board's report on the March 19th Public Hearing could be submitted for the record. Mr. Donaroma suggested that Staff might work on these issues a bit. Ms. Brown recommended that the Written Record be kept open and that the discussion be continued the following week, since she wanted to review the Goals and Guidelines contained in the original Decision.

Ms. Ottens-Sargent requested that Staff provide some clarification on the issue of the possible improper delegation of power by the Planning Board to the Ponds Advisory Committee raised in the letter from Brian Hurley. *[See page 8 of these Minutes.]*

After still more discussion and clarification, Mr. Athearn closed the Public Hearing and left the Written Record open until the close of business on Thursday, March 21, 2002. Chairman Vercruysse called for a short recess. The time was 9:20 p.m. The Chairman reconvened the Special Meeting at 9:26 p.m.

Discussion: Should the Commission Support the Million Solar Roofs Program.

Chairman Vercruysse referred the members to a memorandum from Ms. Warner regarding whether or not the Commission wanted to participate as a local partner in the Million Solar Roofs program. *[See the meeting file for the copy.]* Ms. Warner explained that each local partner in the program would make a commitment to install a minimum of 500 solar roofs in their area. "They do not give you money for the actual equipment and

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installation of the system," she said. "They give you money to plan how you are going to get groups to get interested in this project."

Ms. Warner provided examples of the kinds of groups that the partners would try to involve: the Towns; the school system; and the low-income housing programs. She also described a grant awarded to the Cape Light Compact to study the issue of distributed generation and making power locally.

The main thing that she would like the Commissioners to do, Ms. Warner continued, would be to serve as leaders for teams of people who would do the majority of the renewable energy surveying. This would be done by visually surveying buildings and then recording basic data about their current energy use in order to make a preliminary assessment about their appropriateness for inclusion in the Million Solar Roofs program.

Ms. Warner asked the members to read the material and to take a vote the following week on whether or not to become a local partner in the program. (Ms. Warner mentioned that she could not attend the March 21 Regular Meeting.) Finally, she related how since her company, Under The Sun, stood to make a possible financial gain from the grant, there could be a perceived conflict of interest with Ms. Warner's serving on the boards of the Cape Light Compact and the Martha's Vineyard Commission. She had discussed this with attorney Ronald Rappaport as well as the State Ethics Commission and the solution suggested was as follows:

That Ms. Warner resign from the Cape Light Compact so that she could receive the benefits of coordinating with that organization; and

That she disclose her proposal and ask each Town's Selectmen for designation as a Special Municipal Employee and for an exemption under Section 20D.

She added that if the latter were not approved by the Towns, she would not ask the Commission for a letter of support. After providing a few more details, Ms. Warner noted that the grant application was due on April 11. The Staff Secretary pointed out that the Commission would be meeting on March 21 but not on March 28, which was the first full day of Passover. It was agreed that the members would vote on this on the 21st. The time was 9:32 p.m.

**Discussion/Vote: Conformance with the Commission's Guidelines of the
Proposed Regulations for the Island of Chappaquiddick DCPC.**

Mr. Best made a **Motion To Move To Item Five, Possible Discussion: Conformance with the Commission's Guidelines of the Proposed Regulations for the Island of Chappaquiddick DCPC.** Said Motion was duly seconded by Mr. Athearn.

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Ms. Warner stated that she agreed with public testimony that the proposed Chappaquiddick Affordable Housing Advisory Committee would not of itself produce affordable housing. "So I'm wondering, how can we deal with that?" she asked. Ms. Brown responded, "I'd like to reiterate the testimony that although the committee doesn't – *ensure* was the word which was in our Guidelines – it does have certainly the possibility of producing affordable housing ... I think the ensuring is something that's going to happen over time, and that Affordable Housing Committee is a really good start. It is very committed to figuring it out."

Ms. Warner inquired about the procedure, that is, whether the Commission could vote that Article 11 was not in Conformance with the Guidelines and then the Town would return at some point with a "more concrete" proposal.

Responding to a query from Ms. Ottens-Sargent, Ms. Brown explained that under Edgartown By-Laws there were all kinds of incentives to encourage affordable housing but that they had not as yet produced any. Mr. Zeltzer observed, "To say 'ensure affordable housing' is an impossibility unless the Town wants to do the funding from tax money for affordable housing. I mean, there are groups on the Island that are trying desperately to get more affordable housing going ... I think all you can do is create an environment to support it and create Regulations which will make it as easy as possible."

"Yes, we can't mix up the word 'ensure' with 'guarantee,'" noted Chairman Vercruysse. Mr. Donaroma remarked that he believed the intent of the Regulation was to ensure the availability of affordable housing on Chappaquiddick, not to grab someone and force him to live there. Mr. Israel expressed the view that this was really a matter of semantics and that, overall, Article 11 was consistent with the intent of the Commission's Guidelines.

Ms. Warner suggested that one thing that would help ensure affordable housing would be for portions of lots to be broken off into smaller lots for such housing. She did not see, she said, anything of that nature being proposed. Mr. Wilson, the Chairman of the Planning Board, responded that such a measure was proposed but had been "pulled the last minute." Could the proposal be amended on Town Meeting floor? asked Mr. Israel.

Ms. Brown explained that Edgartown had a by-law adopted a year ago "that said that a pre-existing, nonconforming, unbuildable lot – you know, those little lots around Town – and it was adopted Town-wide, by Special Permit. If you're a Resident-Homesite-qualified person, you can get a Special Permit to build on an existing small lot ... [T]here's a proposal worked out to do the same thing to create an undersized lot. For example, the Land Bank might have a fix on a big hunk of land, but a couple of corners of it – one-acre lots on Chappaquiddick, not three acres – might be appropriate for houses."

Mr. Donaroma made a **Motion To Move To Item Six, Possible Discussion: Conformance with the Commission's Guidelines of the Proposed Regulations for the Island of Chappaquiddick DCPC**, duly seconded. Mr. Israel then made a **Motion That**

The Town's Proposed Regulations For The Chappaquiddick Island District Of Critical Planning Concern Were Consistent With The Commission's Guidelines, duly seconded.

William Venio, Acting Principal Planner of the Commission, conducted a Roll Call Vote on said Motion, with the following results:

AYES: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel;
M. Ottens-Sargent; R. Toole; J. Vercruysse; K. Warner;
R. Wey; A. Woodruff; and R. Zeltzer.

NAYS: None.

ABSTAINING: None.

New Business: Authorization To Sign.

The Chairman read aloud a document submitted to him at the request of Counsel by Acting Executive Director Irene M. Flyer regarding a majority of the Commission's designating and authorizing Ms. Flyer to sign, endorse, certify and validate in the Commission's name on its behalf all official documents, orders, proceedings and other instruments relating to the exercise of the duties and powers of the Commission.

Mr. Israel made a **Motion To Approve And Sign The Document**, duly seconded. Ms. Brown inquired, "I assume that these are the same powers that the Executive Director has always had." The Chairman indicated that they were. Ms. Flyer explained that she needed this authorization in order to be able to sign contracts. The Chairman then passed around the document to be signed.

Approval of Meeting Minutes.

The Chairman turned to the approval of the Full Commission Meeting Minutes of February 21, 2002. "The Assistant District Attorney's waiting for the Minutes," he noted. The Staff Secretary explained that the draft version of these Minutes had been included in the last mailing.

Responding to a question from Ms. Brown, the Staff Secretary referred the members to the letter from the Assistant DA dated February 27, 2002, in which he requested a number of official documents pertaining to the February 21, 2002 Full Commission Meeting. *[See the meeting file for a copy of that letter.]* She had mailed the Assistant DA the draft Minutes, she said, and had assured him that she would mail him the finalized approved Minutes immediately after the next Commission Meeting. The Chairman asked the members if they were ready to vote; they were not and so spent approximately seven minutes studying the Minutes.

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Ms. Ottens-Sargent requested that at the bottom on page 6 some language be added reporting that she had stated that the letter being discussed on February 21 was from Selectman Michael Dutton only and not from the entire Oak Bluffs Board of Selectmen. She thought, she said, that she had reinforced what Mr. Israel had said about the matter. Ms. Brown expressed uncertainty about whether Ms. Ottens-Sargents had made such a statement and noted that not everything said during a Meeting could be included. *[The Staff Secretary checked her shorthand notes and re-listened to the entire tape recording of that discussion at February 21 Regular Meeting but was unable to find such a statement by Ms. Ottens-Sargent; it is possible that said utterance was inaudible.]*

Regarding the same discussion, Mr. Israel asked that the Staff Secretary include in the Minutes the statement by either Todd Rebello or Kenneth Rusczyk that the Oak Bluffs Selectmen had talked to Richard Combra, who was on vacation, by telephone. The Chairman and several other members agreed that Mr. Rebello had made the statement. *[This statement was located on the tape and added to the amended Minutes.]*

Mr. Israel then made a **Motion To Approve The Full Commission Meeting Minutes of February 21, 2002 As Amended**, duly seconded. By voice vote, said Motion carried, with 10 Ayes, no Nays and two Abstaining. The time was 9:58 p.m.

Discussion: Draft Open Letter to the Citizens of Oak Bluffs.

The Chairman explained that he had asked Acting Principal Planner William Veno to draft a open letter from the Commission Chairman to the citizens of Oak Bluffs about the ramifications of the Town's withdrawal from the Commission, to be run as an advertisement in the local newspapers. He was asking the members that evening, he said, to approve the concept of publishing such a letter.

Mr. Veno related that Staff had been working on materials for the Chairman and Richard J. Toole, a Commission member at large from Oak Bluffs, to bring with them to the Oak Bluffs Board of Selectmen's meeting the following Tuesday. Roger Wey, an Oak Bluffs Selectman and the County Commission representative, provided some details about the upcoming meeting.

Mr. Veno then listed some of the advantages that membership in the Commission provided, emphasizing the agency's regulatory powers and the troubles encountered by the Towns of Edgartown and Tisbury after they withdrew in the late 1970s. The Commissioners then discussed the time constraints involved. (The advertisement had to be ready for the newspapers by Tuesday at the latest.)

Mr. Israel remarked that the letter should contain information about the Commission's planning ability, adding that the letter should only state what the Commission did and not anything about the pros and cons of membership. "I think that it would be a great mistake," he said. "It's Oak Bluffs' decision, and they will decide it." "The State decides that," interjected Mr. Best. "Okay, but Oak Bluff Town Meeting will be pursuing it,"

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responded Mr. Israel, "and I think it would be a very sad, sad day if that were to happen. It would be a mistake. I think we ought to let them know what our assets are."

"I don't think we should participate in any of this stuff," declared Mr. Donaroma, "and I hope the Chairman at least gets a vote from the full Commission before we do something like this. I hope we don't just do a dog-and-pony show. We got into trouble before on a much lighter issues." "Are you saying that you don't think I should go to the Selectmen as a member from Oak Bluffs?" inquired Mr. Toole. "No," said Mr. Donaroma, "I just hope we don't put together a letter without the support of the whole Commission." "Well, that's what we're trying to get right now," stressed Mr. Toole.

Mr. Donaroma further argued that to write such a letter would just confirm for the people of Oak Bluffs how out of touch with them the Commission was. "Just leave it alone," he cautioned.

Mr. Zeltzer remarked that his first reaction to the withdrawal proposal was that the electorate got exactly the body the electorate deserved. "This whole thing seems to be about a golf course and nothing else," he observed. Richard Toole had run openly in 2000 and had not disguised his stand on the Down Island Golf Club proposal, he pointed out. "If they're unhappy, the way to resolve their unhappiness is perhaps to impress upon the Selectmen that if they want a particular point of view represented in terms of the Appointee is to have people run and to elect people who represent their point of view."

Mr. Wey commented, "I think the letter is important, you know, to let the people know what the Commission does and the different grants and what they secured over the past 10 years for the Town of Oak Bluffs. A lot of people take a lot of things for granted. I think you've got to lay it out in a simple format – simple, so it's not bogged down and lost within there."

Ms. Ottens-Sargent related that her first reaction to the idea of the letter had been similar to Mr. Donaroma's. She also agreed with Mr. Israel that it would be unwise to list both the pros and cons of Commission membership. Ideally, she said, one of the local newspaper would present an objective assessment of the issues.

Ms. Ottens-Sargent then asked, if Oak Bluffs withdrew from the Commission, did the designated Districts of Critical Planning Concern in the Town lose their effectiveness? No, answered Mr. Veno, the Regulations on the books would remain in force, unless the Town voted to delete or amend them in Town Meeting.

Mr. Best recalled that when Tisbury and Edgartown had withdrawn from the Commission in the late 1970s, the Commission had worked very hard to get them back in. "The Commission did not just sit back and say, 'Well, you know, if you want to come back in, you can come back in.' But there was a great deal of what you would call public outreach," he related. "So I don't think it's unheard of for us to do this. I think it should be carefully worded and strictly informative, not lecturing in any way ..."

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Commenting on Mr. Zeltzer's remarks, Mr. Best pointed out that most of the votes for Mr. Toole were not, in fact, from Oak Bluffs citizens. For that matter, he added, most of his own votes were not from Vineyard Haven. "So the Town really doesn't necessarily have a say in their elected rep," he said. "They do have a say in their appointed rep by the Selectmen."

Mr. Toole responded that his recollection was that he had gotten the highest vote of any of the candidates in Oak Bluffs. What they could not forget, he added, was that the Commission was a regional body. "That's one of the reasons that it's important that every member of the region stay in that regional body ... The whole Island's going to suffer. The other thing is, I can't believe that anybody that sits at the table and who spends as much time and effort as we all do at the Commission wouldn't want to support the idea of people, of Towns remaining in the Commission and who wouldn't want to endorse this letter. I find that, I just don't understand. This isn't an advocacy letter. All it is is a fact letter."

The Staff Secretary clarified with Mr. Veno whether the letter's content was related to the list of grants and other benefits that she had given to DRI Coordinator Jennifer Rand. "No, it wouldn't be a shopping list of things we have done," answered Mr. Veno. Ms. Brown remarked that it might be more effective to state concretely the amounts of the grants, the Staff assistance and so forth. Mr. Veno responded that he had drawn up a draft, but had suggested to the Chairman that it not be handed out because the Commission should first decide whether they wanted such a letter at all.

"Usually people like to look at something before they vote it," noted Chairman Vercruysse. Three or four other Commissioners murmured their agreement, and Mr. Veno passed out the draft letter. *[See the meeting file for a copy.]*

Ms. Warner expressed the opinion that although she thought it was a good idea to present the benefits and the facts, it was also a good idea "to express a little bit of something more along the lines of what Richard [Toole] is saying, which is the Martha's Vineyard Commission feels as a whole that this would be a terrible loss to the community ... I think that that is an emotion that should be expressed."

Mr. Israel pointed out that the Martha's Vineyard Commission was not about a single vote on a golf course proposal. Although he had voted to deny, he continued, he would have accepted that Decision if the course had been approved. "And I'm proud, I'm proud of the Commission," he declared. "I'm not ashamed of my vote, and I'm not ashamed of this Board, and I think the informational packet for Oak Bluffs – it doesn't have to say that, you know, we're the best thing since sliced bread – but some kind of letter that says what we do is in order, because otherwise you permit misinformation."

Mr. Best suggested that the letter include something about the Island Elderly Housing project in Oak Bluffs that had come before them with an inferior, HUD-dictated design.

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"And the Martha's Vineyard Commission, in its review, said, 'We don't want, we don't want this design, get it changed.' They told us, 'Well, we don't think we can change it,' and we actually prevailed upon them, gave them enough of an argument coming from a regional-planning point of view that they were able to get HUD to back off and change, allow them to change the architecture of that building to a more appropriate design."

Mr. Veno reminded the Commissioners that what they were looking at was a first draft. "I think it's a good letter," commented Mr. Wey. The members then spent a few minutes reading the letter.

Ms. Brown expressed the opinion that it would not be appropriate to put the letter before them in a newspaper from the Board as a whole: "It's an advocacy letter rather than a factual letter. I agree that a factual statement ... of what the Commission does is a good thing, whether it's in a letter or an article in the paper ..., but I think the advocacy tone is inappropriate, makes us vulnerable to all kinds of accusations, that we're self-serving, that, you know, and we're not. We're just an agency doing a job."

Ms. Brown also took issue with the second paragraph on the second page of the letter, as she did not recall that the Town of Edgartown had received any significant planning assistance from the Commission after it had withdrawn. Mr. Veno countered that evidence of such assistance was found in a Town Report. Ms. Brown responded that she did not agree that the Commission should be promising the Town of Oak Bluffs that it would continue to receive the degree of planning assistance that it had over the past 10 years if it did withdraw.

Ms. Warner observed that the letter was "too personal-sounding" and "not statesmanlike enough." Mr. Best remarked that perhaps the letter would be a valuable thing for the Chairman and Mr. Toole to bring to the Oak Bluffs Selectmen's meeting. "But the tone, I agree too, should be really cut and dry," he added. Mr. Zeltzer offered the view that "advocacy can be done under the guise of a factual presentation." Also, he said, he thought the letter was "far too long" and the Commission did not have enough time to construct it properly.

Mr. Donaroma declared, "I can't express how strongly I feel that this letter is at the wrong time. I think the newspapers are already doing what you say. The *Gazette* has written and the editor, the owner -- there's a number of articles in there supporting everything that we've done, okay? The *Martha's Vineyard Time*, on the other hand, is reporting everything they think we haven't done for the Town of Oak Bluffs. There you've got it... I think the press would have a field day with this. I think the naysayers would have a field day with something like this."

Mr. Donaroma added that he thought the letter belittled what the Commission did. "Anything you say will only be used against you, in articles like this," he pointed out. If Mr. Toole wanted to go before the Selectmen and stick to the facts, that would be a great

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idea, he said. "[But] any attorney will tell you, the fewer words, the better," he concluded.

Ms. Ottens-Sargent said that she appreciated the effort that had gone into the letter, but she agreed with Mr. Donaroma. Perhaps, she added, Staff could put together an information packet that included information about what had happened to Edgartown and Vineyard Haven when they had withdrawn from the Commission. A simple statement by the Chairman that he hoped the Town would not pull out of the Commission was another possibility, she concluded.

"Opinions are like belly buttons," joked Mr. Israel, "I've heard a lot of them, you know. Just trying to get some levity here." He then reiterated his view that it would not be a good idea to discuss what had happened when Tisbury and Edgartown had withdrawn. He suggested that instead a list be made of what the Commission did and perhaps a few words could be added about the process of getting in and getting out of the Commission, which was a complicated proposition. "No editorializing, no nothing," he added.

Mr. Athearn observed that the members seemed to be pretty much in accord about the nature of letter: that it should be low-key, dignified and dry. If Staff wanted to write a bit about what it was that the Commission did, he could go along with that, he said.

I think it's important that we put something in, put the facts in," said Mr. Wey. "The opposition is distorting the facts around, saying, you know, the Town is spending all this money with the Commission's not doing anything for the Town."

Mr. Best suggested that the draft letter might work if Staff were to take out the first sentence of each paragraph. "Everything else is straight factuals, pretty much what you need to say," he remarked. "If you want to make a statement, bring a boxful of all the DRIs in Oak Bluffs .. and drop it in front of the Selectmen."

"I'm not going to put my name to a letter unless I've got 100 percent support from the Commission," stressed Chairman Vercruysse. If they all could not agree on the letter, then he would sign the letter as an individual, that is, as a representative from Aquinnah.

Mr. Best pointed out that the content of the letter could be something you could bring to any Town. "I don't see that as being controversial," he said, "and virtually 90 percent of what's here you could take to any Town, and it would strictly be factual information about what the Commission does."

Mr. Woodruff said that he felt there were a lot of people who had questions about what the Commission did for the Town of Oak Bluffs. He added that a strictly factual document might benefit some people.

Ms. Warner stated that she wanted to see any letter e-mailed to the members before it appeared in the newspaper. In addition, she noted, she would not start the letter by

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describing how one got out of the Commission. "I wouldn't even mention that," she declared. "I would stick with what are our assets." Ms. Ottens-Sargent recommended that instead of a letter an information packet be presented to the Selectmen.

The Chairman then said that there was no need to vote on the concept of publishing the letter because it was clear that he did not have 100 percent support from the Commission members. Ms. Brown expressed the hope that out of this discussion some kind of factual statement could be developed, something she could give to people who asked her what the Commission had done for their Town.

The members then looked at whether to stick to some statement to the effect that in order to remain strong, all the Towns had to stay in. After some discussion, this idea was discarded.

The talk turned to the possibility that the newspapers would publish an article on the function of the Commission. Mr. Veno posed this question: Did the Commission want to rely upon another party to get the information out? "Maybe *you* want to put the message out," he emphasized.

Mr. Zeltzer reminded the members that a ruling from the Land Court regarding the Commission's authority over Chapter 40B developments was due soon. If it turned out that the MVC had at least conditioning authority, that, he said, would be "a hell of a big club." Ms. Warner pointed out that no matter how the judge ruled, there was certain to be an Appeal.

Mr. Veno observed that there seemed to be a fair amount of agreement that something factual should be drawn up. He suggested that he draft something along the lines of what they had discussed and fax or e-mail it to the members over the weekend.

More discussion followed. Mr. Woodruff said that the question was, Did the Commission want to give Mr. Veno an opportunity for draft something and get it to them? "Then we can reject it or approve it," he said. Mr. Donaroma reiterated his position that the letter was a mistake. It being clear that the letter would not have the full support of the Commission, the idea was dropped. The time was 10:44 p.m.

Miscellaneous.

The Chairman referred the members to a site plan on the back of the Agenda concerning a **visit to the site of the proposed Fair Winds Subdivision (DRI #548)**. Mr. Toole, Chairman of the Land Use Planning Committee, provided a brief overview of the project. The members agreed that the starting time of 4:15 p.m. would work for them. The Staff Secretary filled them in on where they would meet.

Finally, the members looked a letter faxed that day from the District Attorney's office regarding the possibility that the Commission's Search Committee had broken the Open

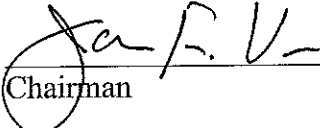
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Meeting Law by not opening up the **interview on March 9 of Stephen Cofer-Shabica.** *[A copy is in the meeting file.]* This being a legal matter, Mr. Israel made a **Motion To Close The Special Meeting And To Go Into Executive Session To Discuss The Allegation And Not To Reconvene The Special Meeting,** duly seconded.


Mr. Veno conducted a Roll Call Vote on said Motion, with the following results:

AYES: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel;
M. Ottens-Sargent; R. Toole; J. Vercruysse; K. Warner;
R. Wey; A. Woodruff; and R. Zeltzer.
NAYS: None.
ABSTAINING: None.

The Special Meeting adjourned, and the Commission went into Executive Session. The time was 10:47 p.m.


Chairman

24 June 2002
Date


Clerk-Treasurer

24 June 2002
Date

PRESENT: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel;
M. Ottens-Sargent; R. Toole; J. Vercruysse; K. Warner;
R. Wey; A. Woodruff; and R. Zeltzer.

ABSENT: A. Bilzerian; M. Cini; J. Greene; E.P. Horne; J. Kelley;
C.M. Oglesby; K. Rusczyk; L. Sibley; and R.L. Taylor.

[These Minutes were prepared by Staff Secretary Pia Webster using her shorthand notes as well as a tape recording of the Special Meeting.]